

REMARKS

Claims 1-25 are currently pending. Claims 11-20 are withdrawn from consideration as being directed to non-elected inventions. In the Office Action of June 25, 2004, the Examiner made the following disposition:

- A.) Rejected claims 1-8 and 21-24 under 35 U.S.C. §103(a) as being anticipated by *Valyi* in view of *Nosella*.
- B.) Rejected claims 9 under 35 U.S.C. §103(a) as being unpatentable over *Valyi* in view of *Nosella* and further in view of *Fortuna*.
- C.) Rejected claim 10 under 35 U.S.C. §103(a) as being unpatentable over *Valyi* in view of *Nosella* and further in view of *Edwards*.
- D.) Rejected claim 25 under 35 U.S.C. §103(a) as being unpatentable over *Valyi* in view of *Nosella* and *Fortuna*.

Applicants respectfully traverse the rejections and address the Examiner's disposition as follows:

- A.) Rejection of claims 1-8 and 21-24 under 35 U.S.C. §103(a) as being anticipated by *Valyi* in view of *Nosella*:

Applicants respectfully disagree with the rejection.

Applicants' independent claims 1 and 24, each as amended, each claim a plastic molded container comprising a bowl comprising an upper rim, a bottom and a sidewall extending between the upper rim and the bottom. The sidewall comprises a lower frustum section, a narrow mid-section, and an upper frustum section. The sidewall has curvilinear transitions from the upper frustum section to the narrow mid-section and from the narrow mid-section to the lower frustum section. The lower frustum section has a volume larger than a volume of the upper frustum section. The container is constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process.

Further, the upper rim defines an opening being as large as a widest diameter of the container.

This is clearly unlike *Valyi*, which fails to even suggest a bowl. Referring to *Valyi* Figure 5, *Valyi* clearly discloses a bottle, not a bowl. The Examiner provides a dictionary definition for "bowl" and argues that *Valyi* meets that definition, however, Applicants respectfully disagree. (Office Action of 6/25/04, para. 9). Although one may argue that a dictionary definition may provide a plain and ordinary meaning of a claim term, one must still look at the reference and

take it for what it is. Applicants submit that it is clear that *Valyi's* container is not a bowl, but is instead a bottle. The definition cited by the Examiner states that a bowl is "open at the top." *Id.* Applicants submit that the Examiner has misconstrued the phrase "open at the top" in the proposed definition to mean having any type of opening at the top, even if the opening is a small hole compared to a widest diameter of the container such as *Valyi's* opening. Merely looking at *Valyi* Figure 5, one of ordinary skill in the art could clearly see that *Valyi's* container is not "open at the top" and not a bowl.

Further, claims 1 and 24, each as amended, each claim the upper rim defines an opening being as large as a widest diameter of the container. *Valyi* clearly fails to disclose or suggest the claimed upper rim. Referring to *Valyi* Figure 5, *Valyi's* upper rim defines an opening that is much smaller than a widest diameter of *Valyi's* container. Thus, for at least this additional reason, *Valyi* fails to disclose or suggest Applicant's claims 1 or 24.

Further, unlike Applicants' claims 1 and 24, *Valyi's* container does not have a lower portion having a greater volume than an upper portion. Instead, *Valyi's* container has a lower portion with a volume that is less than its upper portion's volume. As shown in *Valyi* Figure 5, the upper and lower portions of *Valyi's* container are somewhat mirror images of each other, with the upper portion having a larger volume due to the sidewall's transition into the neck portion. Thus, *Valyi's* container does not have a lower portion with a volume that is less than its upper portion's volume. Accordingly, for at least this additional reason, *Valyi* fails to disclose or suggest Applicants' claims 1 and 24.

The Examiner combines *Valyi* with *Nosella*, however, Applicants submit the combination of references still fails to disclose or suggest claims 1 and 24. Similar to *Valyi*, *Nosella* clearly fails to even suggest a bowl, and fails to teach an upper rim that defines an opening being as large as a widest diameter of its container. Referring to *Nosella* Figure 1, like *Valyi's* container, *Nosella's* container has a small opening. Even under the Examiner's proposed dictionary definition, *Nosella's* container is not "open at the top." Further, unlike claims 1 and 24, *Nosella's* container does not have an upper rim that defines an opening being as large as a widest diameter of its container. *Nosella's* upper rim clearly defines an opening that is much smaller than a widest diameter of *Nosella's* container. Thus, for at least these reasons, *Valyi* in view of *Nosella* still fails to disclose or suggest Applicant's claims 1 and 24.

Claims 2-8 and 21-23 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

B.) Rejection of claims 9 under 35 U.S.C. §103(a) as being unpatentable over *Valyi* in view of *Nosella* and further in view of *Fortuna*:

Applicants respectfully disagree with the rejection.

Applicants' claim 1 is allowable over *Valyi* in view of *Nosella* as described above. Further, *Valyi* in view of *Nosella* and further in view of *Fortuna* still fails to disclose or suggest claim 1. To begin with, Applicants submit there is no teaching in any of the cited references to combine *Valyi's* or *Nosella's* bottle with *Fortuna's* cup design. *Valyi* and *Nosella* clearly teach bottles that have a shoulder and threaded neck and no base. On the other hand, *Fortuna* teaches a design of a cup that has a pedestal base. Applicants submit there is no teaching in either *Valyi* or *Nosella* to look outside of the bottle art or to look to cup art. One of ordinary skill in the art would not have been motivated by any of the cited references to combine the shape of *Fortuna's* cup with *Valyi's* or *Nosella's* bottles. The art areas are simply not close enough to suggest interchanging shapes.

Further, the Examiner argues that one of skill in the art would have been motivated to increase the diameter of *Valyi's* bottle based on the teachings of *Fortuna's* cup. Applicants respectfully disagree and submit that the Examiner has used impermissible hindsight, after having read Applicants' disclosure, to argue the combination of references. The Examiner argues that one of skill in the art would be motivated by *Fortuna* to increase *Valyi's* bottle's capacity by changing the shape of *Valyi's* bottle to be wider like *Fortuna's* cup. That is not merely a change in size, but is a complete redesign of *Valyi's* bottle. Such a redesign would affect the characteristics of the bottle, such as its ability to withstand hot fill conditions. *Valyi* teaches that its bottle can withstand elevated temperatures. That characteristic is exhibited, in part, due to the shape of *Valyi's* bottle. Applicants submit the Examiner's proposed change to *Valyi's* bottle is a material change that clearly is not suggested by *Valyi* or any of the cited references. Applicants submit that, contrary to the Examiner's assertion, one having skill in the art would be taught by *Valyi* to increase the capacity of *Valyi's* bottle by increasing its size, while maintaining its proportions, thereby allowing the bottle to withstand hot fill conditions.

Therefore, *Valyi* in view of *Nosella* and further in view of *Fortuna* still fails to disclose or suggest claim 1. Claim 9 depends directly or indirectly from claim 1 and is therefore allowable for at least the same reasons that claim 1 is allowable.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

C.) Rejection of claim 10 under 35 U.S.C. §103(a) as being unpatentable over *Valyi* in view of *Nosella* and further in view of *Edwards*:

Applicants respectfully disagree with the rejection.

Applicants' claim 1 is allowable over *Valyi* in view of *Nosella* as described above. Further, *Valyi* in view of *Nosella* and further in view of *Edwards* still fails to disclose or suggest claim 1. To begin with, Applicants submit there is no teaching in any of the cited references to combine *Valyi's* or *Nosella's* bottle with *Edwards'* cup design. *Valyi* and *Nosella* clearly teach bottles that have a shoulder and threaded neck and no base. On the other hand, *Edwards* teaches a design of a cup that has a pedestal base. Applicants submit there is no teaching in either *Valyi* or *Nosella* to look outside of the bottle art or to look to cup art. One of ordinary skill in the art would not have been motivated by any of the cited references to combine the shape of *Edwards'* cup with *Valyi's* or *Nosella's* bottles. The art areas are simply not close enough to suggest interchanging shapes.

Therefore, *Valyi* in view of *Nosella* and further in view of *Edwards* still fails to disclose or suggest claim 1. Claim 10 depends directly or indirectly from claim 1 and is therefore allowable for at least the same reasons that claim 1 is allowable.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

D.) Rejection of claim 25 under 35 U.S.C. §103(a) as being unpatentable over *Valyi* in view of *Nosella* and *Fortuna*:

Applicants respectfully disagree with the rejection.

Similar to claim 1, claim 25, as amended, claims a plastic molded container comprising a bowl comprising an upper rim, a bottom and a sidewall extending between the upper rim and the bottom. The sidewall comprises a lower frustum section, a narrow mid-section, and an upper frustum section. The sidewall has curvilinear transitions from the upper frustum section to the

narrow mid-section and from the narrow mid-section to the lower frustum section. The lower frustum section has a volume larger than a volume of the upper frustum section. The container is constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process. The upper rim defines an opening being as large as a widest diameter of the container.

Thus, for at least the reasons discussed above with respect to claim 1, claim 25 is allowable over *Valyi* in view of *Nosella*. Namely, *Valyi* in view of *Nosella* fails to disclose or suggest a bowl, and fails to teach an upper rim that defines an opening being as large as a widest diameter of its container.

Further, *Valyi* in view of *Nosella* and further in view of *Fortuna* still fails to disclose or suggest claim 25. To begin with, Applicants submit there is no teaching in any of the cited references to combine *Valyi's* or *Nosella's* bottle with *Fortuna's* cup design. *Valyi* and *Nosella* clearly teach bottles that have a shoulder and threaded neck and no base. On the other hand, *Fortuna* teaches a design of a cup that has a pedestal base. Applicants submit there is no teaching in either *Valyi* or *Nosella* to look outside of the bottle art or to look to cup art. One of ordinary skill in the art would not have been motivated by any of the cited references to combine the shape of *Fortuna's* cup with *Valyi's* or *Nosella's* bottles. The art areas are simply not close enough to suggest interchanging shapes.

Further, the Examiner argues that one of skill in the art would have been motivated to increase the diameter of *Valyi's* bottle based on the teachings of *Fortuna's* cup. Applicants respectfully disagree and submit that the Examiner has used impermissible hindsight, after having read Applicants' disclosure, to argue the combination of references. The Examiner argues that one of skill in the art would be motivated by *Fortuna* to increase *Valyi's* bottle's capacity by changing the shape of *Valyi's* bottle to be wider like *Fortuna's* cup. That is not merely a change in size, but is a complete redesign of *Valyi's* bottle. Such a redesign would affect the characteristics of the bottle, such as its ability to withstand hot fill conditions. *Valyi* teaches that its bottle can withstand elevated temperatures. That characteristic is exhibited, in part, due to the shape of *Valyi's* bottle. Applicants submit the Examiner's proposed change to *Valyi's* bottle is a material change that clearly is not suggested by *Valyi* or any of the cited references. Applicants submit that, contrary to the Examiner's assertion, one having skill in the art would be taught by *Valyi* to increase the capacity of *Valyi's* bottle by increasing its size, while maintaining its proportions, thereby allowing the bottle to withstand hot fill conditions.

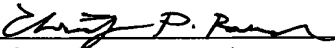
Therefore, *Valyi* in view of *Nosella* and further in view of *Fortuna* still fails to disclose or suggest claim 25.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-10 and 21-25 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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